finding, from the evidence in the case, that the plaintiff had lost his German nationality for all purposes, the decision that he was "stateless" in English law seems to have been fully warranted by the logic of the situation. The dictum that "statelessness" is recognized in the law of nations will be generally approved.

MASTER AND SERVANT—MASTER'S DUTY TO PROVIDE SAFE INSTRUMENTALITIES—DEFECTIVE MOTOR CAR SUPPLIED FOR USE OF SERVANT.—The plaintiff, an employe of the defendant, was given an automobile for use in his master's business. The starting mechanism of the car was defective. Plaintiff complained, but nothing was done. Plaintiff remained in the defendant's employment and continued to use the automobile. While attempting to crank the car the plaintiff was injured. It was contended that he had assumed the risk. *Held,* that plaintiff had not necessarily assumed the risk by remaining in the defendant's employment after learning of the defect. It was a question for the jury. *Baker* v. *James Brothers & Sons,* [1921], 2 K. B. 694.

The early English rule held that a servant who continued to work after knowledge of the risk lost his right to sue for resulting injury. *Griffiths* v. *London & St. Katharine Docks Co.,* (1884), 13 Q. B. 259. The modern English rule holds that knowledge of the risk does not necessarily require, as a conclusion of law, that the servant assumes the risk, but it is a question for the jury. *Smith* v. *Baker,* (1891), L. R., 16 App. Cases 325; *Baker* v. *James Brothers & Sons, supra.* The majority of American courts follow the early English rule. *Lamson* v. *American Axe Co.,* (1900), 177 Mass. 144; *Kansas City, M. & O. Ry. Co.* v. *Loosley,* (1907), 76 Kan. 103; *Santiago* v. *Walsh Stevedore Co.,* (1912), 137 N. Y. Supp. 611. The North Carolina court, however, follows the present English doctrine. *Lloyd* v. *Hanes & Co.,* (1900), 126 N. C. 359. Professor Bohlen states this to be the only court following *Smith* v. *Baker* in America. See 20 HARV. L. REV. 110. The modern English doctrine of treating the question as one of fact for the jury appeals more to one's sense of justice.

MUNICIPAL CORPORATIONS—ORDINANCES—QUESTIONING VALIDITY BY MANDAMUS.—A city ordinance provided that no one should carry on the business of selling jewelry within the city unless he first obtain a license from the mayor. No rules or directions were laid down for the guidance of the mayor, except that he should require a certain bond of the applicant. Plaintiff applied for such license, which was refused. He then applied for mandamus to compel the issuance of the license, and also denied the validity of the ordinance. *Held,* two justices dissenting, the question of constitutionality was not before the court, and the ordinance gives the mayor full discretion to grant or not to grant such license; hence, a writ of mandamus should not be granted. *Samuels* v. *Couzens,* (Mich., 1921), 183 N. W. 925.

The ordinance attempts the regulation of a business which may be carried on as a matter of right, and which the city could not entirely prohibit. As interpreted by the court, it gives the mayor full discretion to grant or

refuse a license and does not lay down the conditions by which he shall be governed. It would seem, therefore, very clearly unconstitutional, as denying the equal protection of the laws, and therefore conflicting with the Fourteenth Amendment, or as being a delegation of legislative power. *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Walsh* v. *City of Denver,* 11 Colo. App. 523; *Smith* v. *Hosford,* 106 Kan. 363; *City of Richmond* v. *House,* 177 Ky. 814; *Commonwealth* v. *Maletsky,* 203 Mass. 241; FREUND, POLICE POWER, 667-670. In *Matter of Frazee,* 63 Mich. 396, the court held an unregulated discretion in the mayor, to permit or prohibit parades on the streets, invalid. But, as the plaintiff asks relief under the ordinance, he cannot question its validity in this action. The cases are all but unanimous on this point. Mandamus cases in which the relator is permitted to raise the question of constitutionality are those wherein he attacks another statute which, if valid, would excuse the respondent from performance. *Von Hoffman* v. *Quincy,* 4 Wall. 535; *Giddings* v. *Secretary of State,* 93 Mich. 1. Hence, if plaintiff wishes to test the validity of the ordinance, he should go ahead with his business and get himself arrested and fined! The method is harsh, wasteful of time and money, and unfair to the party, but the law now offers him nothing better. *Flick* v. *City of Broken Bow,* 67 Neb. 529. The Michigan Declaratory Judgment Law, Act No. 150, P. A. 1919, might have given plaintiff an adequate and efficient remedy, *Dyson* v. *Atty. Gen.,* [1911], 1 K. B. 410, but it has been declared unconstitutional. *Anway* v. *Grand Rapids Ry. Co.,* 211 Mich. 592. See 16 MICH. L. REV. 69; 17 MICH. L. REV. 688. 19 MICH. L. REV. 86. 19 MICH. L. REV. 537 discusses a similar statute now in effect in Kansas. However, even though plaintiff in the instant case could not insist that the constitutional question be considered, the court *may* indulge in such consideration when the invalidity is clear, although neither party can, or does, insist thereon. *Welch* v. *Swasey,* 193 Mass. 364; *State* v. *Robins,* 71 Ohio St. 273. And if, as the court insisted, this be prevented by the rule that if a cause can be decided without passing on the constitutional question, such question will not be considered, there is another well-known rule applicable to the case, namely, that when one interpretation of a statute will make it unconstitutional, whereas another will make it valid, the court will give the latter if it can do so without straining the words and evident intent of the legislature. Upon this ground the dissenting justices contended that the ordinance should be construed as giving the mayor no discretion in the matter.

NEGLIGENCE—DUTY TOWARD INFANT TRESPASSERS—ATTRACTIVE NUISANCES.—Defendant caused certain excavations to be made on his premises. Plaintiff's child, playing with others around the excavation, was killed when the walls caved. In an action for damages it was alleged that the excavation was eight feet deep in sandy soil; that defendant knew that because of the nature of the soil a cave-in might occur at any time; that he knew the premises to be attractive to playing children; that he knew that children played there, and yet he took no precautions to guard them from danger or to warn them. Defendant demurred. *Held,* demurrer should be overruled. *Baxter* v. *Park,* (S. D., 1921), 184 N. W. 198.